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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

KUHNS, SARAH LOUISE

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/771,648

Applicant(s)

RENGER ET AL.

Examiner

Sarah L Kuhns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-17 and 20, drawn to a resealable container, classified in class 426, subclass 106.
- II. Claims 18 and 19, drawn to a process for making a resealable container, classified in class 220, subclass unknown.

Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the resealable container does not require that the beads be formed using a sealing tool comprising two sealing walls separated from one another by a space.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Stephen Harper on February 17, 2005, a provisional election was made with traverse to prosecute the invention of Group 1, claims 1-17 and 20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 18 and 19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

Claim 11 is objected to because of the following informalities: The components of the adhesive are labeled A, B, D, and F and should instead be A, B, C, and D. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the

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applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-10, 13-17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engelaere, U.S. Patent 6,302,290 in view of Varadarajan, U.S. Patent 6,544,613.

In regard to claims 1 and 5, Engelaere discloses a resealable container having a container opening, wherein the resealable container (C) comprises a rim (5) and a multilayer film (F) covering the container opening (O) and the rim (5), the multilayer film (F) comprising at least an outer layer (2), a sealing layer (1) facing the rim (5) and a layer of adhesive (3) between the outer layer (2) and the sealing layer (1) and the sealing layer (1) being secured around the rim (5) and containing a weak spot in the form of a weakening line (column 4, lines 56-63), such that when the resealable container is first opened a single bead of the sealing layer remains on the rim in the region of the weak spot (claim 1). Engelaere does not disclose a double bead of the sealing layer remaining on the rim. Varadarajan discloses a container comprising a rim and a film with a sealing layer being secured around the rim (abstract) and also teaches that the use of double bead seals was well known to one of ordinary skill in the art (column 6, line 51 - column 7, line 54). It therefore would have been obvious to use a double bead seal in the invention of Engelaere in order to provide a resealable container in which the seal has increased tensile or burst strength, while maintaining a relatively low peel strength for ease of opening by the consumer.

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In regard to claim 2, Engelaere discloses the outer layer (2) comprising polyamide (column 6, line 61), polyvinyl chloride (column 7, line 1), and polyethylene terephthalate (column 7, lines 3-4).

In regard to claims 3 and 4, Engelaere discloses the welding layer comprising high density polyethylene (claim 12), which inherently has a melting point of approximately 130°C, which falls within the claimed temperature range.

In regard to claim 6, Engelaere discloses the multilayer film comprising at least an outer layer (2) and two sealing layers (1 and 2); the sealing layers being separated by an adhesive layer (3). Engelaere does not disclose the exact amount of the surface area of a sealing layer that is occupied by the adhesive, but it would have been obvious to occupy just under 100% of the surface area in order to ensure good resealing qualities while avoiding having the adhesive exposed along the edges of the film.

In regard to claim 7, figure 5 of Engelaere suggests that the multilayer film is sealed against the rim in such a way that part of the sealable periphery of the rim has a single bead and part of the rim is permanently sealed. It would have been obvious to use a double bead instead of a single bead as discussed above. Further, it would have been obvious to vary the percentage of the film that has a double bead based on the size and/or type of product that is being stored within the container in order to better accommodate product removal.

In regard to claims 8 and 10, Engelaere discloses the adhesive layer (3) comprising acrylic polymer or hot-melt adhesive, based on a thermoplastic elastomer (column 6, lines 63-64), which are both pressure-sensitive adhesives. Engelaere also discloses the use of a hot-melt adhesive based on a thermoplastic elastomer having a viscosity of 15000 mPas at 150°C (claim 10).

In regard to claim 9, Engelaere discloses the adhesive layer (3) having a thickness of 10 micrometers (column 6, lines 63-65).

In regard to claim 13, absent a showing by clear and convincing evidence to the contrary, it would be expected that the sealing layer of Engelaere is embrittled in the region of the weak spot since the weak spot of Engelaere is formed in a manner very similar to that of applicant, and therefore would likely have the same properties as that claimed.

In regard to claims 14-17, Engelaere fails to disclose the weak spot being formed through the use of a sealing tool comprising two sealing walls. However, Varadarajan discloses a container comprising a rim and a film with a sealing layer being secured around the rim (abstract) and also teaches that the use of a double bead seals was well known to one of ordinary skill in the art (column 6, line 51 - column 7, line 54). Additionally, the process by which the beads are formed does not affect the patentability of the container. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Further, it would have been obvious to vary the distance between the beads according to the size and shape of the specific container in order to obtain the optimum sealing conditions.

In regard to claim 20, Engelaere discloses the resealable container in combination with a food product packaged therein (column 5, lines 51-53).

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Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Engelaere in view of Varadarajan, as applied to claims 1-10, 13-17, and 20 above, in further view of Cameron et al., U.S. Patent 6,120,899. Engelaere does not disclose the exact make-up of the adhesive layer. Cameron discloses a hot melt adhesive composition comprising 5 to 90% by weight of at least one basic polymer from the group consisting of ethylene copolymers and styrene copolymers (column 14, line 66 – column, 15, line 13), 10 to 70% by weight of aliphatic, cycloaliphatic, and/or aromatic hydrocarbon resins (column 17, lines 26-40), and 0 to 50% by weight of a plasticizer such as a naphthenic mineral oil (column 18, lines 43-64). It would therefore have been obvious to use the adhesive composition of Cameron in the invention of Engelaere because the adhesive taught by Cameron remains tacky to the touch even after the adhesive has solidified (column 1, lines 27-31) and therefore would be effective in a resealable container.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Engelaere in view of Varadarajan, as applied to claims 1-10, 13-17, and 20 above, in further view of Chandran et al., U.S. Patent 5,416,127. Engelaere does not disclose the adhesive comprising a radiation cross-linked adhesive. However, it was well known to one of ordinary skill in the art to cross-link adhesives, as evidenced by Chandran (column 4, line 65 – column 5, line 2). It therefore would have been obvious to use radiation to cross-link the adhesive in the invention of Engelaere in order to improve the cohesiveness of the adhesive.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nagano et al., U.S. Patent 4,659,785, discloses a hot melt adhesive composition comprising a styrene-type hydrocarbon-modified polyolefin. Lamping et al., U.S. Patent 4,673,601, discloses a cold- or heat-sealable composite film comprising a permanently adhesive layer, which can be used as a closing membrane for preformed containers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK


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